

107TH CONGRESS  
1ST SESSION

# H. R. 3160

To amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 2001

Mr. TAUZIN (for himself and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition the the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 23, 2001

Committees on Energy and Commerce and the Judiciary discharged;  
considered under suspension of the rules and passed

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## A BILL

To amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Bioterrorism Enforce-  
3 ment Act of 2001”.

4 **SEC. 2. EXPANSION OF BIOLOGICAL WEAPONS STATUTE.**

5       (a) SELECT AGENTS.—

6           (1) IN GENERAL.—Section 175 of title 18,  
7 United States Code, is amended—

8           (A) by redesignating subsection (b) as sub-  
9 section (c); and

10           (B) by inserting after subsection (a) the  
11 following subsection:

12       “(b) SELECT AGENTS.—

13           “(1) UNSAFE HANDLING.—

14           “(A) IN GENERAL.—Whoever possesses,  
15 uses, or exercises control over a select agent in  
16 a manner constituting reckless disregard for the  
17 public health and safety, knowing the select  
18 agent to be a biological agent or toxin, shall be  
19 fined under this title, imprisoned for not more  
20 than one year, or both.

21           “(B) AGGRAVATED OFFENSE.—Whoever,  
22 in the course of a violation of subparagraph  
23 (A), causes bodily injury to another shall be  
24 fined under this title, or imprisoned for not  
25 more than 10 years, or both; except that if  
26 death results from such violation, the person

1 committing the violation shall be fined under  
2 this title, or imprisoned for any term of years  
3 or for life, or both.

4 “(2) UNREGISTERED FOR POSSESSION.—Who-  
5 ever knowingly possesses a biological agent or toxin  
6 where such agent or toxin is a select agent for which  
7 such person has not obtained a registration under  
8 section 511(f) of the Antiterrorism and Effective  
9 Death Penalty Act of 1996 shall be fined under this  
10 title, or imprisoned for not more than 5 years, or  
11 both.

12 “(3) TRANSFER TO UNREGISTERED PERSON.—  
13 Whoever knowingly transfers a select agent to a per-  
14 son who has not obtained a registration under sec-  
15 tion 511(e) of the Antiterrorism and Effective Death  
16 Penalty Act of 1996 shall be fined under this title,  
17 or imprisoned for not more than 5 years, or both.

18 “(4) RESTRICTED PERSONS.—Whoever is a re-  
19 stricted person and knowingly ships or transports a  
20 select agent in interstate or foreign commerce, or  
21 knowingly receives a select agent so shipped or  
22 transported, or knowingly possesses a select agent in  
23 or affecting interstate or foreign commerce, shall be  
24 fined under this title, or imprisoned for not more  
25 than 5 years, or both. The preceding sentence does

1 not apply with respect to any duly authorized gov-  
2 ernmental activity under title V of the National Se-  
3 curity Act of 1947.”.

4 (2) DEFINITIONS.—Section 175 of title 18,  
5 United States Code, as amended by paragraph (1)  
6 of this subsection, is amended by amending sub-  
7 section (c) to read as follows:

8 “(c) DEFINITIONS.—As used in this section:

9 “(1) The terms ‘biological agent’ and ‘toxin’  
10 have the meanings given such terms in section 178,  
11 except that, for purposes of subsection (b), such  
12 terms do not encompass any biological agent or  
13 toxin that is in its naturally occurring environment,  
14 if the biological agent or toxin has not been cul-  
15 tivated, cultured, collected, or otherwise extracted  
16 from its natural source.

17 “(2) The term ‘bodily injury’ has the meaning  
18 given such term in section 1365.

19 “(3) The term ‘for use as a weapon’ includes  
20 the development, production, transfer, acquisition,  
21 retention, or possession of any biological agent,  
22 toxin, or delivery system, other than for prophylactic,  
23 protective, or other peaceful purposes.

24 “(4)(A) The term ‘restricted person’ means a  
25 person—

1 “(i) who is described in section 922(g), as  
2 such section was in effect on the day before the  
3 effective date of this paragraph; or

4 “(ii) who is an alien, other than an alien  
5 lawfully admitted for permanent residence or an  
6 alien who under subparagraph (B) is considered  
7 not to be a restricted person.

8 “(B) For purposes of subparagraph (A)(ii):

9 “(i) An alien is considered not to be a re-  
10 stricted person if the alien is within a category  
11 designated under clause (ii) of this subpara-  
12 graph.

13 “(ii) The Secretary of Health and Human  
14 Services, in consultation with the Attorney Gen-  
15 eral, may designate categories of individuals  
16 who have—

17 “(I) nonimmigrant visas as defined in  
18 section 101(a)(26) of the Immigration and  
19 Nationality Act; and

20 “(II) expertise valuable to the United  
21 States regarding select agents.

22 “(5) The term ‘select agent’ means a biological  
23 agent or toxin, as defined in paragraph (1), that—

24 “(A) is on the list that is in effect pursu-  
25 ant to section 511(d)(1) of the Antiterrorism

1 and Effective Death Penalty Act of 1996 (Pub-  
2 lic Law 104–132); and

3 “(B) has not been exempted from the ap-  
4 plicability of regulations under section 511(e) of  
5 such Act.”.

6 (3) EFFECTIVE DATE REGARDING RESTRICTED  
7 PERSONS; REGULATIONS.—

8 (A) EFFECTIVE DATE.—Section 175(b)(4)  
9 of title 18, United States Code, as added by  
10 subsection (a)(1)(B) of this section, takes effect  
11 upon the expiration of the 90-day period begin-  
12 ning on the date of the enactment of this Act.

13 (B) REGULATIONS.—Not later than 30  
14 days after the date of the enactment of this  
15 Act, the Secretary of Health and Human Serv-  
16 ices shall determine whether the Secretary will  
17 designate any categories or individuals for pur-  
18 poses of section 175(c)(4)(B) of title 18, United  
19 States Code, as added by subsection (a)(1)(B)  
20 of this section. If the Secretary determines that  
21 one or more such categories will be designated,  
22 the Secretary shall promulgate an interim final  
23 rule for purposes of such section not later than  
24 60 days after such date of enactment.

1           (4) CONFORMING AMENDMENT.—Section  
2       175(a) of title 18, United States Code, is amended  
3       in the second sentence by striking “under this sec-  
4       tion” and inserting “under this subsection”.

5       (b) AMENDMENTS TO ANTITERRORISM AND EFFEC-  
6       TIVE DEATH PENALTY ACT OF 1996.—

7           (1) POSSESSION AND USE.—

8           (A) IN GENERAL.—Section 511 of the  
9       Antiterrorism and Effective Death Penalty Act  
10      of 1996 (Public Law 104–132) is amended—

11                   (i) by striking subsection (f);

12                   (ii) by redesignating subsection (g) as  
13                   subsection (i); and

14                   (iii) by inserting after subsection (e)  
15                   the following subsection:

16       “(f) POSSESSION AND USE OF LISTED BIOLOGICAL  
17       AGENTS AND TOXINS.—

18           “(1) IN GENERAL.—The Secretary shall by reg-  
19       ulation provide for the establishment and enforce-  
20       ment of standards and procedures governing the  
21       possession and use of biological agents and toxins  
22       listed pursuant to subsection (d)(1) in order to pro-  
23       tect the public health and safety, including safe-  
24       guards to prevent access to such agents and toxins

1 for use in domestic or international terrorism or for  
2 any other criminal purpose.

3 “(2) REGISTRATION.—Regulations under para-  
4 graph (1) shall provide for registration requirements  
5 regarding the possession and use of biological agents  
6 and toxins listed pursuant to subsection (d)(1).”.

7 (B) REGULATIONS.—

8 (i) DATE CERTAIN FOR PROMULGA-  
9 TION; EFFECTIVE DATE REGARDING CRIMI-  
10 NAL AND CIVIL PENALTIES.—Not later  
11 than 30 days after the date of the enact-  
12 ment of this Act, the Secretary of Health  
13 and Human Services shall promulgate an  
14 interim final rule for carrying out section  
15 511(f) of the Antiterrorism and Effective  
16 Death Penalty Act of 1996, as added by  
17 subparagraph (A) of this paragraph. Such  
18 interim final rule takes effect 60 days after  
19 the date on which such rule is promul-  
20 gated, including for purposes of—

21 (I) section 175(b)(2) of title 18,  
22 United States Code (relating to crimi-  
23 nal penalties), as added by subsection  
24 (a)(1)(B) of this section; and

1 (II) section 511(h) of the  
2 Antiterrorism and Effective Death  
3 Penalty Act of 1996 (relating to civil  
4 penalties), as added by paragraph (3)  
5 of this subsection.

6 (ii) SUBMISSION OF REGISTRATION  
7 APPLICATIONS.—In the case of a person  
8 who, as of the date of the enactment of  
9 this Act, is in possession of a biological  
10 agent or toxin that is listed pursuant to  
11 section 511(d)(1) of the Antiterrorism and  
12 Effective Death Penalty Act of 1996, such  
13 person shall, in accordance with the in-  
14 terim final rule promulgated under clause  
15 (i), submit an application for a registration  
16 to possess such agent or toxin not later  
17 than 30 days after the date on which such  
18 rule is promulgated.

19 (2) DISCLOSURES OF INFORMATION.—

20 (A) IN GENERAL.—Section 511 of the  
21 Antiterrorism and Effective Death Penalty Act  
22 of 1996, as amended by paragraph (1) of this  
23 subsection, is amended by inserting after sub-  
24 section (f) the following subsection:

25 “(g) DISCLOSURE OF INFORMATION.—

1           “(1) IN GENERAL.—Any information in the  
2           possession of any Federal agency that identifies a  
3           person, or the geographic location of a person, who  
4           is registered pursuant to regulations under this sec-  
5           tion (including regulations promulgated before the  
6           effective date of this subsection), and any site-spe-  
7           cific information relating to the type, quantity, or  
8           identity of a biological agent or toxin listed pursuant  
9           to subsection (d)(1) or the site-specific security  
10          mechanisms in place to protect such agents and tox-  
11          ins, shall not be disclosed under section 552(a) of  
12          title 5, United States Code.

13          “(2) DISCLOSURES FOR PUBLIC HEALTH AND  
14          SAFETY; CONGRESS.—Nothing in this section may be  
15          construed as preventing the head of any Federal  
16          agency—

17                 “(A) from making disclosures of informa-  
18                 tion described in paragraph (1) for purposes of  
19                 protecting the public health and safety; or

20                 “(B) from making disclosures of such in-  
21                 formation to any committee or subcommittee of  
22                 the Congress with appropriate jurisdiction,  
23                 upon request.”.

24                 (B) EFFECTIVE DATE.—The effective date  
25                 for the amendment made by subparagraph (A)

1           shall be the same as the effective date for the  
2           final rule issued pursuant to section 511(d)(1)  
3           of the Antiterrorism and Effective Death Pen-  
4           alty Act of 1996 (Public Law 104–132).

5           (3) CIVIL PENALTIES.—Section 511 of the  
6           Antiterrorism and Effective Death Penalty Act of  
7           1996, as amended by paragraphs (1) and (2) of this  
8           subsection, is amended by inserting after subsection  
9           (g) the following subsection:

10          “(h) CIVIL PENALTY.—Any person who violates a  
11         regulation under subsection (e) or (f) shall be subject to  
12         the United States for a civil penalty in an amount not  
13         exceeding \$250,000 in the case of an individual and  
14         \$500,000 in the case of any other person.”.

15                 (4) CLARIFICATION OF SCOPE OF SELECT  
16         AGENT RULE; TERRORISM; RESPONSIBILITIES OF  
17         SECRETARY OF HEALTH AND HUMAN SERVICES.—

18                 (A) IN GENERAL.—Section 511 of the  
19         Antiterrorism and Effective Death Penalty Act  
20         of 1996 (Public Law 104–132) is amended—

21                         (i) in each of subsections (d) and  
22                         (e)—

23                                 (I) by inserting “and toxins”  
24                                 after “agents” each place such term  
25                                 appears; and

1 (II) by inserting “or toxin” after  
2 “agent” each place such term ap-  
3 pears; and

4 (ii) in subsection (i) (as redesignated  
5 by paragraph (1) of this subsection), in  
6 paragraph (1), by striking “the term ‘bio-  
7 logical agent’ has” and inserting “the  
8 terms ‘biological agent’ and ‘toxin’ have”.

9 (B) EFFECTIVE DATE.—The effective date  
10 for the amendments made by subparagraph (A)  
11 shall be as if the amendments had been in-  
12 cluded in the enactment of section 511 of the  
13 Antiterrorism and Effective Death Penalty Act  
14 of 1996 (Public Law 104–132).

15 (5) CONFORMING AMENDMENTS.—Section 511  
16 of the Antiterrorism and Effective Death Penalty  
17 Act of 1996 (Public Law 104–132) is amended—

18 (A) in subsection (d)(1)(A), by striking  
19 “shall, through regulations promulgated under  
20 subsection (f),” and inserting “shall by regula-  
21 tion”;

22 (B) in subsection (e), in the matter pre-  
23 ceding paragraph (1), by striking “shall,  
24 through regulations promulgated under sub-

1 section (f),” and inserting “shall by regula-  
2 tion”;

3 (C) in subsection (d)—

4 (i) in the heading for the subsection,  
5 by striking “AGENTS” and inserting  
6 “AGENTS AND TOXINS”; and

7 (ii) in the heading for paragraph (1),  
8 by striking “AGENTS” and inserting  
9 “AGENTS AND TOXINS”; and

10 (D) in the heading for subsection (e), by  
11 striking “AGENTS” and inserting “AGENTS AND  
12 TOXINS”.

13 (c) REPORT TO CONGRESS.—Not later than one year  
14 after the date of the enactment of this Act, the Secretary  
15 of Health and Human Services, after consultation with  
16 other appropriate Federal agencies, shall submit to the  
17 Congress a report that—

18 (1) describes the extent to which there has been  
19 compliance by governmental and private entities  
20 with applicable regulations under section 511 of the  
21 Antiterrorism and Effective Death Penalty Act of  
22 1996 (Public Law 104–132), including the extent of  
23 compliance before the date of the enactment of this  
24 Act, and including the extent of compliance with

1 regulations promulgated after such date of enact-  
2 ment;

3 (2) describes the future plans of the Secretary  
4 for determining compliance with regulations under  
5 such section 511 and for taking appropriate enforce-  
6 ment actions; and

7 (3) provides any recommendations of the Sec-  
8 retary for administrative or legislative initiatives re-  
9 garding such section 511.

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